



PIERCE AND ASSOCIATES
ATTORNEYS AT LAW
One North Dearborn
Suite #1300
Chicago, IL 60602

Denis B. Pierce, x 5242
Katherine G. File, x 5224
Sylvia J. Neumann, x 5240
Jill D. Rein, x 5156
Diana N. Athanascopoulos, x 5152
Jennifer M. VanderWagen, x 5182
Richard M. Rosenbaum, x 5194
David J. Rhodes, x5196
James J. Bernhard, x5160
Michael Kemock, x5168
Margaret O'Donnell, x5178
Allison Siebold, x5172
R. Elliot Halsey, x5206
John J. Knopik II, x5186
Lydia Siu, x5190
Jennifer Williams, x5198
Erin Smith, x5208
Jyothi Ramana, x5176
Greg Czaicki, x5180
Gina Matthiesen, x5200
Paul Brask, x5150
Jasmin L. Koleczek, x 5184
Michelle Tecson, x 5604

Tele: (312) 346-9088
FAX: (312) 551-4400
<http://www.atty-pierce.com>

Andrew J. Nelson, x 5154
Cheryl A. Considine, x 5170
Amy Anne Aronson, x 5158
Yanick E. Polycarpe, x 5192
Dana N. O'Brien, x 5188
Christopher M. Brown, x 5162
Toni Dillon, x 5174
Lydia Y. Siu, x 5190

Noonan & Lieberman
Of-Counsel

E-Mail:
dpierce@atty-pierce.com
fo@atty-pierce.com
Eviction@atty-pierce.com


May 25, 2012

Supreme Court Mortgage Foreclosure Committee
c/o Administrative Office of the Illinois Courts
3101 Old Jacksonville Road
Springfield, Illinois 62704
Also via Fax (217-785-3793)

Dear Committee Members:

Enclosed please find our firm's comments regarding the proposed recommendations for improving loss mitigation for mortgage foreclosure proceedings.

Very truly yours,


Andrew J. Nelson
Pierce and Associates, PC

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fo@atty-pierce.com
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May 24, 2012

Re: Comments on Proposed Recommendations for Improving Loss Mitigation for Mortgage Foreclosure Proceedings

Loss Mitigation

1. **Transparency.** The HAMP program already includes its own guidelines that lenders must follow when reviewing for loan modifications, including the denial process. When a borrower is denied a HAMP modification, the lender must mail written notification to the property with a reason for denial, no later than 10 days after the denial. If the denial is based on a negative NPV value, then the written denial must include specific NPV input values used in the calculation, although the actual test and certain NPV input values are not included. Borrower may dispute a HAMP denial based on negative NPV value within 30 days of the denial letter. To add any additional guidelines to the existing HAMP guidelines would be redundant and could lead to conflict over which guidelines the lender should follow.

In addition, if lenders are mandated to provide all tests and inputs used in loss mitigation, then a borrower may be able to determine what information result in an approval. For example, if a borrower is denied because their expenses are too high in comparison to their income, they then may be able to determine the "magic number" to include for their expenses in order to obtain loss mitigation approval, even if that number is not necessarily accurate for their situation.

2. **Notice.** In the lender's solicitation package, written notice should be included, which provides more detailed instructions on how to complete the documents required for a loss mitigation financial package (ex: all documents must be dated within 30 days of submission, attach even if blank pages of a bank statement, etc. In the interest of efficiency, lenders should consider providing written notice that specifies the loss mitigation programs available to that particular borrower. This would prevent unnecessary submissions and reviews, and would ensure that borrowers are aware of their specific loss mitigation options.

3. **Deadlines.** There should be clear deadlines for when a borrower's loss mitigation application must be submitted, reviewed and decisioned. A borrower should be made aware that underwriters reviewing their file may require additional or clarifying documentation upon review of their initial application, which may lead to longer reviews.

4. **Escalation.** An internal escalation process should be reserved for time sensitive issues, ex: issues converting a trial modification plan into a permanent modification plan provided the trial modification plan requirements were met.

5. Dual Tracking. If lenders are already required to notify borrowers of default and the imminent foreclosure filing, pursuant to existing state requirements, then foreclosure proceedings should not halt because the borrower was provided with the opportunity to apply prior to the foreclosure complaint being filed.

6. Single Point of Contact. While this is beneficial in many situations, a possible exception to this would be if the borrower is participating in a mediation program and is represented by legal counsel. In those situations, it is best for communication to go through parties' counsel to avoid miscommunication and conflicting information.

7. Defense to Foreclosure. This requirement is too burdensome and would create an undue burden on the lender to disprove this defense.

8. Loss Mitigation Affidavit. This affidavit should only be required when a borrower appears and is making a good faith attempt at loss mitigation.

Mediation

1. Outreach. The court system should reach out to borrowers in foreclosure to apprise them of local mediation programs so that these programs can be utilized as early as possible in the foreclosure proceedings.

2. Mandatory or Opt-In. Mediation should be optional, opt-in only. Mandatory mediation programs would waste limited resources on borrowers who are not interested in participating in the program. Additionally, there should be rules regarding eligibility to participate in the program to filter out cases that are not suitable for mediation (ex: vacant properties, investment properties, deceased borrowers, non cooperative co-borrowers, etc). Those success of cases where borrowers voluntarily opt-in to the program should be measured by real, measurable results. In opt-in states, there is only a minority of people who elect to opt-in to the program.

3. Housing Counseling. Housing Counselors should be part of the mediation process and help filter out cases not suitable for mediation on a more substantive basis (ex: borrower is unemployed). If borrowers are pro se then housing counselors should facilitate communication between borrower and lender/lender's counsel regarding loss mitigation applications.

4. Legal Aid. Working with a volunteer group of attorneys is really not feasible as is seen in Cook County wherein a case is set for hearing a year after requested and will only add to the extended time frames. This makes it much more difficult for a borrower to qualify for a loan modification. If pro bono attorneys and law students are used, they must be plenty in number and they must be adequately trained and informed on the foreclosure mediation process and requirements. Understaffing and lack of training is detrimental to borrowers.

5. Pre-Mediation Process. There should be no pre complaint filing mediation process as this did not work in Florida. There should be a court-monitored process to ensure that each party complies with the program standards. If borrowers are non-compliant then they should be removed from the mediation program.

6. Trained Mediators. Mediators should be mindful of their own personal perceptions regarding foreclosure mediations between corporation and individuals and remain neutral throughout the process. In states like Connecticut, the mediators are paid State employees with full benefits

Very truly yours,

Andrew J. Nelson
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